

In the High Court of Judicature at Madras

Dated : 22.7.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice T.MATHIVANAN

Writ Petition Nos.21831 & 21832 of 2015
& M.P.Nos.1 & 1 of 2015

- 1.Bharat Sanchar Nigam Ltd., rep.
by its Chairman & Managing
Director, Statesman House,
No.48, Barakhamba Road,
New Delhi-110001. ...1st Petitioner in
both WPs
- 2.The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Chennai Telephones, No.78,
Purasaiwakkam High Road,
Chennai-10. ...2nd Petitioner in
WP.No.21831/2015
& 6th Petitioner in
WP.No.21832/2015
- 3.The Accounts Officer (South West),
O/o the General Manager (South),
Bharat Sanchar Nigam Ltd.,
Chennai Telephones, No.40,
Cipet Road, Guindy, Chennai-32. ...3rd Petitioner
in W.P.No.21831/2015
- 4.The Chief General Manager,
Maintenance, Bharat Sanchar Nigam
Ltd., South Telecom Region, NO.11,
Link Road, Ganapathy Colony,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai-32. ...2nd Petitioner in
WP.No.21832/2015
- 5.The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Southern Telecom Projects,
BSNL Tower, No.25, Greenways
Road, Raja Annamalaipuram,
Chennai-28. ...3rd Petitioner in
WP.No.21832/2015

6.The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
Tamil Nadu Telecom Circle,
No.80, Anna Salai, Chennai-2.

...4th Petitioner in
WP.No.21832/2015

7.The Chief General Manager,
Bharat Sanchar Nigam Ltd.,
National Centre for Electronic
Switching Circle E-2,
Jhandewalan Extension,
Mezzennine Floor, New Delhi-110055.

...5th Petitioner in
WP.No.21832/2015

Vs

1.The Registrar, Central Administrative
Tribunal, Madras Bench.

...1st respondent in
both the WPs

2.***S.Prathaban**

...2nd respondent in
WP.No.21831/2015

3.K.Ramadoss

4.K.Ravi

5.S.Appadurai

6.R.Sekaran

7.S.Duraiaraj

8.A.Anantharaman

9.P.Chinnakkannan

10.A.Appandairajan

11.A.Nallathambi

12.S.Hema

13.V.Gnanasekaran

14.K.Vedantarajagopalan

15.M.Sivakumar

16.M.Natarajan

17.R.Nagarajan

18.K.Thirugnanem

19.K.Sundar

20.K.Palani

21.P.S.Krishnan

22.S.Murugesan

23.J.Rajan

24.L.Arokiaraj

25.K.Sivaramakrishnan

26.G.Swaminathan

...Respondents 2 to
25 in WP.No.21832/
2015

PETITIONS under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent dated 20.2.2015 respectively made in O.A.Nos.379 and 615 of 2012 and to quash the same as illegal.

For Petitioners : Mr.M.Govindaraj

For R2 in W.P.No.21831/2015 &
R2 to R25 in W.P.No.21832 of 2015 : Mr.Karthik

COMMON ORDER

(Order of the Court was made by V.RAMASUBRAMANIAN,J)

The Bharat Sanchar Nigam Limited has come up with the above writ petitions challenging the orders passed by the Central Administrative Tribunal, Madras Bench, granting the relief of stepping up of pay in favour of the contesting respondents in these writ petitions, on par with their juniors.

2. Heard Mr.M.Govindaraj, learned counsel for the petitioners. Mr.Karthik, learned counsel takes notice for the contesting respondents.

3. The Central Administrative Tribunal allowed the applications filed by the contesting respondents in these writ petitions, giving a direction to the petitioners to step up the pay of the contesting respondents on par with their juniors, with effect from the date on which the anomaly of seniors drawing lesser pay than the juniors arose. The order of the Central Administrative Tribunal is based upon a decision of the Ernakulam Bench of the Tribunal, which was confirmed not only by the High Court of Kerala, but also by the Supreme Court. Therefore, we do not find any infirmity in the order of the Tribunal.

4. However, Mr.M.Govindaraj, learned counsel for the petitioners contended that these anomalies that the contesting respondents raised, were not covered by Fundamental Rule 22(1)(a) and that therefore, the Tribunal was wrong in granting the relief.

5. It may be so. However, the order of the Ernakulam Bench, as extracted by the Madras Bench in paragraph 7 of the impugned order, reads as follows :

"The root cause of the anomaly is the policy of the respondents, which allows the benefit of pay fixation upon time bound financial upgradation as well as upon ad hoc/regular promotion. The juniors got the benefit of pay fixation on the 2nd time bound financial

upgradation and on post based ad hoc promotion whereas the applicants being seniors got post based ad hoc promotion with the benefit of pay fixation and because of the post based ad hoc promotion, which is considered as post based promotion, they were not given the 2nd time bound financial upgradation in 2009. Thus, the seniors missed out the benefit of one financial upgradation only because they were seniors to be promoted earlier than their juniors. When the benefit of pay fixation upon time bound financial upgradation, which is to be given as a temporary substitute for promotion which is delayed for want of vacancy of post, the question whether again the benefit of upgradation of pay upon ad hoc/regular promotion is to be given or not, is for the respondents to ponder over."

6. Unfortunately for the petitioners, the petition filed in O.P.No.1572 of 2012 by the BSNL as against the order of the Ernakulam Bench was dismissed by a Division Bench of the High Court of Kerala on 10.7.2012. The BSNL filed a special leave petition in S.L.P. (Civil) No.7716 of 2013 as against the order of the High Court of Kerala confirming the order of the Ernakulam Bench of the Tribunal. But, by an order dated 8.1.2015, the Supreme Court dismissed the special leave petition. Hence, the issue raised by the petitioners has now been settled by these decisions and the Madras Bench could not have taken a different view.

7. It is also stated that the order of the Ernakulam Bench has been implemented by the Department. In addition, we do not find that the contesting respondents were guilty of any delay in approaching the Tribunal. They do not appear to have waited for the decision of the High Court Kerala to come up with their applications. Hence, we do not find any reason to interfere with the order of the Tribunal.

8. Therefore, the writ petitions are dismissed. No costs. Consequently, the above MPs are also dismissed.

Sd/-

Asst.Registrar (CS II)

DATED : 19.08.2015

***Corrected as per the order of this court dated 28.08.2015 and made herein**

Sd/-Assistant Registrar(CS II)

DATED : 03.09.2015

/true copy/

Sub Asst. Registrar

To

The Registrar,
Central Administrative Tribunal,
Madras Bench.

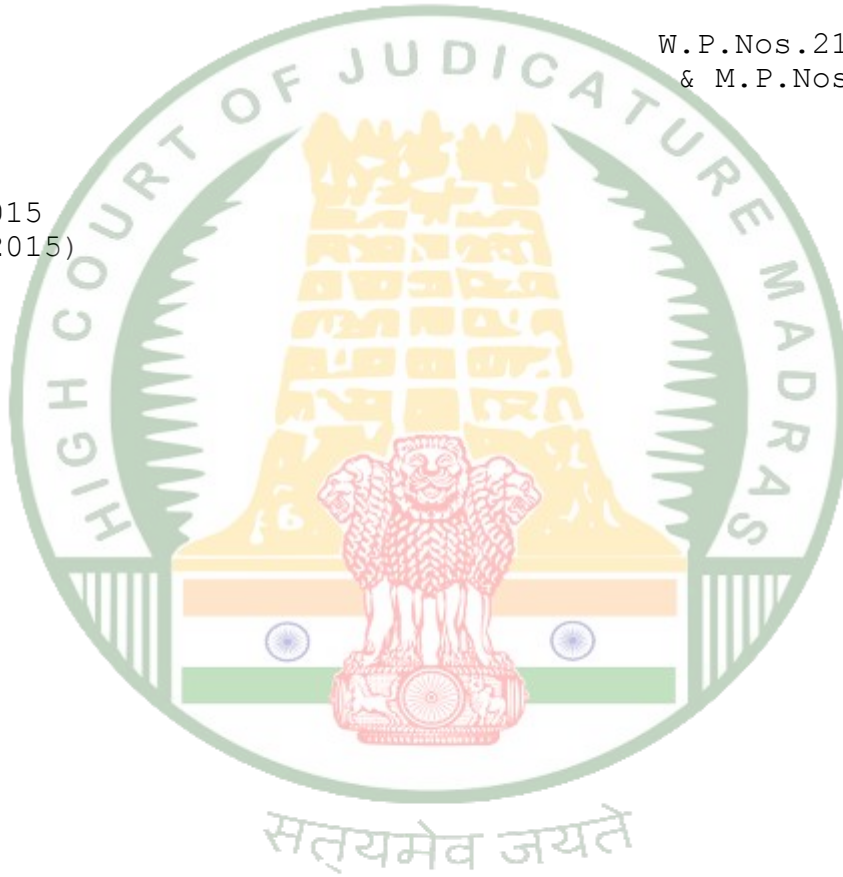
To be Sunstituted to the Order
already despatched on 27.08.2015

+2 cc to M/S.Govindaraj, Advocate sr.37154

+2 cc to Minor Karthi R.Mukundan & Neelantan, Advocate sr.**46676**

W.P.Nos.21831 & 21832/2015
& M.P.Nos.1 and 1 of 2015

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